

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB THSS 14-02 Pub. Rec./Toll-by-Plate  
**SPONSOR(S):** Transportation & Highway Safety Subcommittee  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Transportation & Highway Safety Subcommittee	13 Y, 0 N	Thompson	Miller

### SUMMARY ANALYSIS

Current law provides a public records exemption for personal identifying information provided to, acquired by, or in the possession of the Department of Transportation (DOT), a county, or an expressway authority for the purpose of using a credit card, charge card, or check for the prepayment of electronic toll facilities. This prepayment system is the electronic transponder method of toll payment otherwise known as "SunPass."

The bill expands the current public record exemption to include personal identifying information held by DOT, a county, a municipality, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and other amounts due. This would include personal identifying information of customers who use the post-payment method of toll payment otherwise known as "Toll-By-Plate." This would also add municipalities to the current list of toll records custodians.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

**Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands a current public record exemption; thus, it requires a two-thirds vote for final passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person the right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

##### Electronic Toll Payment

Subject to limited exemptions, current law prohibits persons from using any toll facility without payment.<sup>3</sup> The Department of Transportation (DOT) is authorized to adopt rules relating to the payment, collection, and enforcement of tolls, including, but not limited to, rules for the implementation of video or other image billing and variable pricing.<sup>4</sup> DOT has implemented two electronic toll collection programs, SunPass and Toll-By-Plate.

SunPass<sup>5</sup> is a prepaid system of electronic toll collection that is accepted on all Florida toll roads and nearly all toll bridges. SunPass utilizes a prepaid account system and electronic devices called transponders that attach to the inside of a car's windshield. When a car equipped with SunPass goes through a tolling location, the transponder sends a signal and the toll is deducted from the customer's prepaid account. SunPass account information includes the license plate number, address, and credit card information.<sup>6</sup>

The Toll-By-Plate<sup>7</sup> program, established by DOT in 2010, is an image-based system of toll collection available on the southern 47 miles of Florida's Turnpike in Miami-Dade. The Miami-Dade Expressway

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<sup>1</sup> Section 24(c), Art. I of the State Constitution.

<sup>2</sup> See s. 119.15, F.S.

<sup>3</sup> See s. 338.155(1), F.S. The exemptions generally include toll employees on official state business, state military personnel on official military business, persons authorizing resolution for bonds to finance the facility, persons using the toll facility as a required detour route, law enforcement officers or persons operating a fire or rescue vehicle when on official business, funeral processions of law enforcement officers killed in the line of duty, and handicapped persons.

<sup>4</sup> Section 338.155(1), F.S.

<sup>5</sup> Rule 14-15.0081, F.A.C.

<sup>6</sup> Information on SunPass is available at, <http://www.floridasturnpike.com/all-electronic tolling/SunPass.cfm> (last visited Dec. 9, 2013).

<sup>7</sup> Rule 14-100.005, F.A.C.

Authority (MDX) and the Tampa-Hillsborough Expressway Authority (THEA) have their own toll-by-plate programs. Toll-By-Plate takes a photo of a license plate as a vehicle travels through a Turnpike tolling location and mails a monthly bill for the tolls, including an administrative charge, to the registered owner of the vehicle. Accounts can be set up as pre-paid or post-paid.<sup>8</sup> Accounts may require name, address, email, driver's license number, day time phone number, and credit and debit card numbers.<sup>9</sup>

#### Public Records Exemption: Electronic Payment of Tolls

Section 338.155(6), F.S., provides that personal identifying information provided to, acquired by, or in the possession of DOT, a county, or an expressway authority for the purpose of using a credit card, charge card, or check for the prepayment of electronic toll facilities charges is exempt<sup>10</sup> from public records requirements. This provision was first adopted in 1996.<sup>11</sup>

Recently, DOT has expanded its use of electronic toll collection with the Toll-By-Plate video billing system. The current SunPass public records exemption does not protect the personal identifying information of Toll-By-Plate customers. Also, municipalities are not included in the current list of public records custodians relating to the payment and collection of tolls.

### **Proposed Changes**

The bill amends s. 338.155(6), F.S., to expand the current public records exemption to include personal identifying information held by DOT, a county, a municipality, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and associated administrative charges due for the use of toll facilities. This would include personal identifying information of Toll-By-Plate customers. This would also include municipalities in the current list of public records custodians relating to the payment and collection of tolls.

The bill provides for the repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 338.155, F.S., related to the payment of tolls on toll facilities.

Section 2. Provides a finding of public necessity.

Section 3. Provides that the bill is effective upon becoming a law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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<sup>8</sup> Information on toll-by-plate is available at, <http://www.floridasturnpike.com/all-electronictolling/TOLL-BY-PLATE.cfm> (Last visited Dec. 9, 2013).

<sup>9</sup> Information on toll-by-plate accounts can be found at, <https://www.tollbyplate.com/displaySelectCustomerTypeRegisterAccountNewAccount> (Last visited Dec. 10, 2013).

<sup>10</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See Attorney General Opinion 85-62 (August 1, 1985).

<sup>11</sup> Chapter 96-178, L.O.F.; codified as s. 338.155(6), F.S.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could create a minimal fiscal impact on state and local agencies with staff responsible for complying with public records requests as staff could require training related to the expansion of the public record exemption. In addition, an agency could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the

law. The bill expands the public record exemption to include personal identifying information held by DOT, a county, a municipality, or an expressway authority for the purpose of paying tolls by any means of payment. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Retroactive Application

The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively.<sup>12</sup> The bill does not contain a provision requiring retroactive application. As such, the public record exemption would apply prospectively; however, the Toll-By-Plate program began operating as early as 2010.<sup>13</sup>

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On Thursday, January 9, 2014, the Transportation & Highway Safety Subcommittee adopted two amendments to PCB THSS 14-02. Amendment one revises the public necessity statement to describe the protections the bill provides for information regarding the location, travel patterns, and travel activity of toll customers and the related benefits such protections would provide to public health and safety. Amendment two includes municipalities in the current list of toll records custodians.

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<sup>12</sup> *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

<sup>13</sup> Information received from the Florida Department of Transportation, March 13, 2013 (email on file with the Transportation and Highway Safety Subcommittee).